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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/065,808	11/21/2002	Alain Blanc	FR920010070	7979

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EXAMINER

DING, LEIBO

ART UNIT PAPER NUMBER

2632

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/065,808

**Applicant(s)**

BLANC ET AL.

**Examiner**

Leibo Ding

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in EPO on Nov 23, 2001. It is noted, however, that applicant has not filed a certified copy of the EP01480118.7 application as required by 35 U.S.C. 119(b).
2. It is noted that this application appears to claim subject matter disclosed in prior Application No. EP01480118.7, filed on Nov 23, 2001. A reference to the prior application must be inserted as the first sentence(s) of the specification of this application or in an application data sheet (37 CFR 1.76), if applicant intends to rely on the filing date of the prior application under 35 U.S.C. 119(e), 120, 121, or 365(c). See 37 CFR 1.78(a). For benefit claims under 35 U.S.C. 120, 121, or 365(c), the reference must include the relationship (i.e., continuation, divisional, or continuation-in-part) of all nonprovisional applications. If the application is a utility or plant application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the specific reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a utility or plant application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the specific reference must be submitted during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or

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sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii). This time period is not extendable and a failure to submit the reference required by 35 U.S.C. 119(e) and/or 120, where applicable, within this time period is considered a waiver of any benefit of such prior application(s) under 35 U.S.C. 119(e), 120, 121 and 365(c). A benefit claim filed after the required time period may be accepted if it is accompanied by a grantable petition to accept an unintentionally delayed benefit claim under 35 U.S.C. 119(e), 120, 121 and 365(c). The petition must be accompanied by (1) the reference required by 35 U.S.C. 120 or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted), (2) a surcharge under 37 CFR 1.17(t), and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

If the reference to the prior application was previously submitted within the time period set forth in 37 CFR 1.78(a), but not in the first sentence(s) of the specification or an application data sheet (ADS) as required by 37 CFR 1.78(a) (e.g., if the reference was submitted in an oath or declaration or the application transmittal letter), and the information concerning the benefit claim was recognized by the Office as shown by its inclusion on the first filing receipt, the petition under 37 CFR 1.78(a) and the surcharge under 37 CFR 1.17(t) are not required. Applicant is still required to submit the reference

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in compliance with 37 CFR 1.78(a) by filing an amendment to the first sentence(s) of the specification or an ADS. See MPEP § 201.11.

### ***Specification***

3. The disclosure is objected to because of the following informalities:

On page 3, in line 5 of paragraph [0011], "This guarantees that data for the "pure" data" should be "This guarantees that data for the voice and real-time data".

Appropriate correction is required.

### ***Claim Objections***

4. Claims 1, 2, 3 and 5 are objected to because of the following informalities:

In line 5 of claim 1, "each data packet" should be "each of data packet".

In line 13 of claim 1, line 5 of claim 2, line 3 of claim 3 and line 4 of claim 5, "priority N" should be "priority rank N".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1 – 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, first, applicant used “its” in line 6, but it is not clear what “it” stands for, it is not clear “it” is data packet, scheduler or queue device. Clarification is needed.

Secondly, applicant used “packet” in line 7, also applicant uses “data packet” in lines 1, 3, 5 and 12. It is not clear they represent each other or not. Clarification is needed.

Claims 2 – 5, which cited “data packet”, are rejected, before “data packet” and “packet” are clarified as in claim 1.

***Double Patenting***

7. A rejection based on double patenting of the “same invention” type finds its support in the language of 35 U.S.C. 101 which states that “whoever invents or discovers any new and useful process ... may obtain a patent therefor ...” (Emphasis added). Thus, the term “same invention,” in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

8. Claims 1 – 4 and 8 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 – 4 and 9 of copending Application No. 10/065,809. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

9. Claims 1 – 4 and 8 are directed to the same invention as that of claims 1 – 4 and 9 of commonly assigned Application No. 10/065,809. The issue of priority under 35 U.S.C. 102(g) and possibly 35 U.S.C. 102(f) of this single invention must be resolved.

Since the U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300), the assignee is required to state which entity is the prior inventor of the conflicting subject matter. A terminal disclaimer has no effect in this situation since the basis for refusing more than one patent is priority of invention under 35 U.S.C. 102(f) or (g) and not an extension of monopoly.

Failure to comply with this requirement will result in a holding of abandonment of this application.

It should be noted that the instant application and Application 10/065809 have the same assignee – International Business Machine Corporation.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1, 2 and 8 are rejected under 35 U.S.C. 102(e) as being unpatentable by U. S. Patent Number US 6680933 to Julian J. Cheesman (hereinafter “Cheesman”).

With respect to claim 1, Cheesman discloses a method and system for switching protocol data units across communications links connecting the switch into a communications network and supporting multiple service types concurrently (lines 1 – 4 in abstract). The system includes input ports for transmitting data to the switch, output ports for receiving data from the switch (col. 5, lines 26 – 29 and Figure 1), queues and schedulers (col. 5, lines 30 – 32 and Figure 1); and the scheduler is a 3 – level hierarchical priority scheduler, the group of queues 142a, connected to the priority scheduler module 144a, is for absolute priority FIFO class queuing, the priority scheduler of the scheduler module 144a allocates link bandwidth in strict priority order to the group of queues 142a, which works like the credit device for providing the some queues for priority ranks (col. 11, lines 6 – 14 and Figure 8), and the group of queues



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142b, connected to the WQF (weighted fair queuing) scheduler of the scheduler module 144a, is for aggregated connection and class queuing, the WFQ scheduler of the scheduler module 144a allocates weights of link bandwidth, or can allocate explicit minimum bandwidth, the output of the WFQ scheduler of the scheduler module 144a is connected to the priority scheduler of the same module (col. 11, lines 15 – 30 and Figure 8). That explicitly means the WFQ scheduler is served whenever the 142a queues are empty, and WFQ scheduler serves 142b queues according to their relative weighting (pre-determined priority). Cheesman just uses different term (priority scheduler) to represent the same function (credit device and priority rank) as instant application.

With respect to claim 2, Cheesman discloses that the priority scheduler of scheduler module 144a, is for absolute priority FIFO class queuing (col. 11, lines 6 – 8, 11 – 14 and Figure 8). So the readout of queues is in pre-determined strict priority order instead of normal priority algorithm.

With respect to claim 8, Cheesman discloses that the switch includes input ports for transmitting data to switching fabric and output ports for receiving data from switching fabric (col. 5, lines 26 – 29).

***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3 – 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6680933 to Julian J. Cheesman (hereinafter “Cheesman”) in view of US Patent Number 6721273 to Norman A. Lyon (hereinafter “Lyon”).

Cheesman discloses all the limitation of claims 1 and 2 (see above), which claims 3 – 7 depend.

With respect to claims 3 and 4, Cheesman does not disclose that a data packet is read out only if an active GRANT signal from the receiving device is received by the queue scheduler, and the GRANT signal depends on the status of the receiving queue device.

With respect to claims 5 – 7, Cheesman does disclose that the WFQ scheduler is served whenever the CBR queue (highest priority) is empty; the WFQ scheduler serves the other WFQ scheduler or one of the aggregated connection queues (normal priority preemption) according to their relative weighting (col. 7, lines 29 – 37).

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Lyon teaches a method and apparatus for traffic flow control in a data switch, wherein a traffic flow controller is coupled between the output and input ports, the traffic flow controller controls the flow of cells into the switching core in dependence upon signaling, in the form of input port and output port messages, from the input and output ports respectively (col. 5, lines 22 – 27); the output port message includes a grants output for sending port and memory grant message (col. 6, lines 6 – 8); the traffic flow controller has an input for receiving port/memory grant messages from the output buffers (col. 15, lines 49 – 51); the congestion counters (in the traffic flow controller) are monitoring traffic congestion at the output of the switch, via port/memory grant messages received by the controller from the output ports (col. 15, lines 59 – 62); and at the input ports, cells in queues will be either transmitted or discarded based on the traffic flow controller's information (col. 4, lines 8 – 11). That means data packets in the input queues will be read out based on the traffic flow controller, the decision made by controller is based on port/memory grant messages from the output buffers, and the messages include the status of output buffer (congestion status or bandwidth threshold, in another word, buffer level status). The flowchart will be output buffer status → grant messages → controller → input queue read out/discard.

It would have been obvious to a person of the ordinary skill in the art at the time the invention was made to add the function of GRANT feedback message for controlling the input buffer readout in a switch as taught by Lyon to the method for switching protocol data units across communications links of Cheesman.

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The motivation for doing so would have been to avoid congestion in the communication switch and achieve better traffic flow control (col. 2, lines 39 – 40 of Lyon).

Therefore, it would have been obvious to combine Lyon with Cheesman to obtain the invention as specified in claims 3 – 7.

### ***Conclusion***

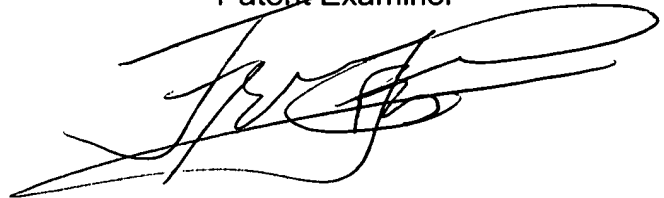
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leibo Ding whose telephone number is (571) 270-1137. The examiner can normally be reached on Monday-Friday, 7:30 a.m.--5:00 p.m.,EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz F. Jules can be reached on (571) 272-6681. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

LD/  
September 6, 2006

Frantz F. Jules  
Supervisory  
Patent Examiner

A handwritten signature in black ink, appearing to read 'Frantz F. Jules', is written over the printed name and title.